

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

LONE STAR STEAKHOUSE &
SALOON OF NEW JERSEY, INC.¹

Employer

and

Case 4-RC-19665

LOCAL 54, HOTEL EMPLOYEES,
RESTAURANT EMPLOYEES
INTERNATIONAL UNION, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer operates a restaurant named Lone Star Steakhouse & Saloon in Egg Harbor Township, New Jersey (herein called the restaurant). The restaurant is part of a chain of such restaurants owned and operated by the Employer's parent corporation and its subsidiaries. The Petitioner seeks to represent a unit of approximately 15 "back of the house" employees consisting of line cooks, prep cooks, cooks, dishwashers, pot washers, sauté cooks and prep persons. The Employer contends that the smallest appropriate unit consists of its approximately 50 nonsupervisory employees, including the

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

employees sought as well as the “front of the house” employees, i.e., servers, hosts and hostesses and bartenders. The parties stipulated that “key employee” Nathaniel Dickerson should be included in the unit. The Petitioner declined to state at the hearing whether it would be willing to proceed to an election in any unit other than the petitioned-for unit.

The record shows that when patrons enter the Employer’s restaurant, they approach a hostess stand where they are greeted by a host or hostess. If a table is not immediately ready, the host or hostess takes their names and directs them either to a waiting area to their right or to a lounge and bar further into the building. The lounge and bar are also to the right of the entrance. When seating becomes available, a host or hostess shows the patrons to their table and gives them silverware and menus. Most tables are on the left side of the restaurant. If they wish, patrons may walk into a section of the kitchen area where there is a large display case featuring the cuts of meat they may choose for their meal. Behind a trellis in the dining area, in about the middle of the building, there is a wait alley behind a wall. On the side closest to the dining area, there is a service line where servers build salads and obtain condiments, beverages, and other items needed for their patrons. They perform these functions outside of the view of the patrons. On the other side of the wait alley is a four-foot high stainless steel shelf called “the window” where an expeditor, standing in the “cook alley” on the opposite side of the window, gives servers plates of food to deliver to their patrons. Also in the cook alley further away from the dining area is the back line where the broilers, grills, burners and fryers are located. Beyond these cooking lines toward the back of the restaurant is an icemaker and “prep alley” where food is prepared for cooking. Furthest away from the hostess area at the back of the restaurant is a walk in cooler and storage areas. Beyond the wait and cook alley in the kitchen area, on the opposite side of the restaurant from the meat display case, is the dishwashing area.

The restaurant is open from 11 a.m. to 10 p.m. Sunday through Thursday. On Friday and Saturday, the restaurant opens at 11 a.m. and stops serving food at 11 p.m., but keeps its bar open until the last guest leaves or until the closing time required by the state.

The Employer seeks to maintain a general manager, a kitchen manager, an assistant kitchen manager, a bar manager and a service manager in each restaurant. However, at the time of the hearing, the Employer only employed a general manager, a kitchen manager and a bar manager at this location.³ All of the Employer’s managers are cross-trained and undergo an eight-week training course designed to teach them each other’s duties. The managers serve, on a rotating basis, as the manager on duty, the opening front house manager or closing manager. The Employer tries to have two managers in the restaurant at all times, one in the front of the house and one in the back of the house. The individual acting as the opening front house manager comes in about 10:00 a.m. and remains until business declines. The person acting as the closing manager comes in at 3:00 p.m. and remains until closing. The kitchen manager, because of the kitchen’s prep duties, arrives at 8:00 a.m. and works until 5:00 or 6:00 p.m.⁴

³ The parties did not take a position as to whether department managers are supervisors within the meaning of Section 2(11) of the Act or whether they should be excluded from the unit. As I find below that the petitioned-for unit of back of the house employees is appropriate, the kitchen manager, and if hired by the eligibility cutoff date, the assistant kitchen manager, shall be voted subject to challenge.

⁴ When an assistant kitchen manager is hired, that manager will substitute for the kitchen manager when he or she is absent. It is not clear in the record who currently manages the kitchen when the kitchen manager is absent.

The individual serving as the manager on duty makes overtime decisions on the shift, takes job applications and interviews the applicant on the spot. If the manager for the area for which the employee applies is working at the time, the manager on duty introduces the employee to the manager and that manager will also interview the applicant. Only the general manager conducts second interviews and makes all hiring decisions. Consequently, an employee may be hired for an area without the manager for that area ever having met or interviewed the employee. While any manager may send any employee home for gross misconduct, the employee must return the next day and speak with the general manager. The general manager makes all discharge decisions, though he or she must first consult with the regional manager before communicating the decision to the employee.

All employees receive the same first 10 hours of orientation and training. The Employer uses the same evaluation form for all employees and the managers in each area are expected to complete an evaluation of every employee in his or her area every 90 days. The Employer gives only positive evaluations and uses them to motivate employees, as the basis for merit-based wage increases and in scheduling employees. The more lucrative shifts and stations are assigned to those servers who receive the most favorable evaluations.

All employees generally work a lunch shift, a dinner shift, or both. The general manager determines the total number of staff needed for each day and delegates to each manager the creation of a schedule for his or her employees. Separate schedules for the kitchen employees, the bar, hosts and servers are posted together on the bulletin board adjacent to the office in the kitchen. With full manager staffing, the kitchen manager or assistant kitchen manager would schedule kitchen employees; the service manager would schedule servers and bus employees; the bar manager would schedule bartenders; and either the service manager or the bar manager would schedule hosts. At the time of the hearing, it was unclear who scheduled the employees in those departments where there is no department manager. The opening crew for the kitchen, which includes prep cooks and dishwashers, generally begins work at about 8:00 a.m., while servers normally begin work between 10:00 or 10:30 a.m. Afternoon starting times for both front and back of the house employees are staggered as needed.

All employees wear jeans, tennis shoes and T-shirts with the name of the restaurant on them. The T-shirts are of different colors, but the record does not reflect the significance of the different colors. Employees who work in the back of the house wear hats when cooking food and they must pull their hair back when prepping food. Servers wear aprons.

In the back of the house, prep cooks do food preparation work, such as cutting up lettuce and putting it in bowls. They also “pull” salad dressings and other items needed for the shift. Cooks set up the cook line, help with prep work, and prepare food throughout the lunch and dinner hours. Cooks may make their own soups, grill or broil chicken and keep the food either hot or cold. They may also work at a broil station, at the expeditor station where they coordinate the presentation of the meal, or at a sauté station. The dishwashers wash dirty dishes, glassware, silverware, and kitchen items, check and help clean rest rooms every half hour, run glasses to the bar, and sweep and maintain the parking lot. They may also do some prep work such as making salads. Kitchen employees are hourly paid ranging from \$5.15 to \$10 per hour, and do not receive tips. Back of the house employees have little, if any, contact with customers and do not handle money.

In the front of the house, hosts greet customers, give them menus and silverware when they seat them, and bus tables. They earn a minimum wage set by the State of New Jersey along with a share of tips from the tip pool, giving them an approximate hourly wage of \$6 to \$7 per hour. Because servers and bartenders are not always tipped, the Employer creates a tip pool that is distributed among the hosts and bartenders.

Servers take food and beverage orders from customers; put bread and butter on their tables; punch the patrons' orders into the computer, which are then transmitted to the kitchen for preparation; run food to particular tables, including their own; add toppings and dressings to salads in the wait alley and, when they run out, go back into the prep area of the kitchen and prepare salads. They also perform one or more side duties during the course of their shifts such as stocking napkins, polishing and stocking kabob forks, refilling cinnamon sugar containers, making coffee or tea, filling ice, and stocking butter. These duties often bring the server back into various areas of the kitchen as needed to retrieve refrigerated or dry storage such as ice, butter or napkins. Servers spend about 20 to 30 percent of their shifts in the back of the house. The Employer pays servers a minimum hourly rate of \$2.13 per hour, but with tips they can earn up to \$10.00 per hour. Tips during lunch tend to be lower. Consequently, the Employer sometimes pays servers a higher hourly rate during lunchtime shifts.

Bartenders mix and serve drinks, take food orders from customers in the bar area and enter them into the computer system. They also operate the cash register behind the bar. A server brings food into the bar for bar patrons and a host, hostess or server then clears the food in the bar area. Employees other than bartenders are not permitted behind the bar. The Employer pays bartenders the same hourly rate as servers. Their pay is similarly augmented with tips they earn individually as well as collectively from the tip pool. The Employer estimated that they earn slightly more than hosts, who earn \$6 to \$7 per hour with tips. Front of the house employees have a great deal of customer contact, and bartenders, servers, and occasionally hosts, handle money.

All employees are paid every two weeks and punch in and out using the same time recording system at any one of five locations around the restaurant, including behind the bar. All employees park in the same parking lot, are subject to the same personnel policies and may order food from the lunch menu from 2:00 to 5:00 p.m. for half price. They receive no holiday, vacation or sick-leave pay but may pay for insurance coverage through the Employer's plan.

The Employer encourages cross training. Three back of the house employees have cross-trained for front of the house duties such as host and server, and have worked such shifts in addition to their back of the house shifts. Similarly, two hosts have cross-trained to perform dishwasher duties in the kitchen and have worked such back of the house shifts in addition to their host duties.

The Board applies its traditional community of interest test to determine the appropriateness of bargaining units in the restaurant industry. *Washington Palm, Inc.*, 314 NLRB 1122 (1994). Factors considered include the physical layout of the restaurant, employees' job duties, compensation, supervision, working conditions, integration and area practice. In determining whether a petitioned-for unit is appropriate, the Board recognizes that the unit sought by the petitioning union is always a relevant consideration. *Id.* The Act does not require that a bargaining unit be the only appropriate bargaining unit, the ultimate unit, or the most appropriate unit. *Washington Palm*, supra, 314 NLRB at 1126; *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* on other grounds 190 F.2d 576, 28 LRRM 2364 (7th Cir. 1951). Rather, the Act requires only that the unit be "appropriate." *Dundee's Seafood*, 221 NLRB 1183, 1184 (1975). Although the business of preparing and presenting meals in a restaurant necessarily requires a significant degree of coordination between kitchen employees and servers, such functional integration will not require a broad restaurant-wide unit where other factors show that a smaller unit is an appropriate one. *Westward Ho Motel*, 171 NLRB 1351, 1352 (1968); see *Washington Palm*, supra, 314 NLRB 1122.

Applying these factors to the instant proceeding, I find that the unit of line cooks, prep cooks, cooks, dishwashers, pot washers, sauté cooks, prep persons and the back of the house hourly key employee constitutes an appropriate unit for purposes of collective bargaining. Like the bargaining unit of non-tipped kitchen employees found appropriate by the Board in *Washington Palm*, a number of factors support the same finding here, including the physical layout of the Employer's restaurant, the employees' separate supervision and job functions and certain differences in their compensation and other terms and conditions of employment.

With respect to the physical layout of the restaurant, the cook line is a substantial division between the employees in the back of the house and those in the front. In the front, employees have regular

interactions with restaurant guests. Back of the house employees have only incidental contact with the guests. Other than the meat display case, a wall obstructs a view of the kitchen area from the main dining room. The line cooks, prep cooks, cooks, prep persons and dishwashers work almost exclusively in the back of the house. By contrast, hosts, hostesses, servers and bartenders spend most of their shifts in the front of the restaurant. Further, the working time spent by servers in the back of the house is limited largely to retrieving or putting away items, polishing silverware, napkin folding or prep work. Servers and bartenders use a computer to relay customer orders to the cooks, and the Employer uses an expeditor to hand food to customers, both of which obviate the need for direct work-related communications between the two groups of employees.

The kitchen manager prepares the weekly schedule for the back of the house and generally supervises these employees. Similarly, the bar manager and other managers responsible for the front of the house schedule their respective employees and supervise them during their shifts. Although the Employer's managers are cross-trained and alternately serve as manager on duty and opening and closing managers, the kitchen manager, because of the kitchen's prep duties, regularly arrives about 8:00 a.m. and consistently supervises the back of the house. During the period between 8:00 a.m. and 10:00 or 11:00 a.m., the only employees and the only manager in the restaurant are those in the back of the house.

The duties of the various cooks, prep cooks and dishwashers are fundamentally different from those of the front of the house employees. Because these employees remain in the kitchen area, they have a great deal of contact with each other. The prep and line cooks prepare the food. Dishwashers wash dirty dishes, glassware, silverware, and kitchen items, and perform some cleaning duties in the restrooms and outside. These are behind-the-scenes aspects of the restaurant's business dealings, and involve skills different than those needed by front of the house employees, who have significant guest contact and in most cases, money handling responsibilities.

The few benefits offered to all employees are uniform. However, while all back of the house employees are hourly paid and are not tipped, the food servers, hosts, hostesses and bartenders are tipped employees who also share the proceeds of a tip pool. There are also differences in the work schedules for the back of the house employees than those in the front. The opening crew for the kitchen begins at 8:00 a.m. while front of the house employees begin at 10:00 or 11:00 a.m. or in the afternoon.

Although the Employer cross-trains its employees, only a handful of employees have performed shifts in the front of the house in addition to their back of the house shifts or vice versa.

Based on the foregoing, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time line cooks, prep cooks, cooks, dish washers, pot washers, sauté cooks, prep persons and back of the house key employee employed by the Employer at its Egg Harbor Township, New Jersey restaurant, excluding bartenders, hosts, hostesses, servers, and guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,⁵

⁵ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and

subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**LOCAL 54, HOTEL EMPLOYEES, RESTAURANT
EMPLOYEES INTERNATIONAL UNION, AFL-CIO**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **June 2, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **June 9, 1999**.

Dated May 26, 1999

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

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